Moderne Rechtsprobleme. (Zweite, durchgearbeitete Auflage.) By JOSEF KOHLER. (Leipzig and Berlin: B. G. Teubner, 1913. Pp. vi, 98.)

The first edition dedicated to Prof. Carlo Fadda was published in 1907 and has been translated into Italian by Luigi Lordi with an introduction by Ferrara. In the present edition two new sub-titles have been added, various paragraphs have been rewritten, and the notes as revised have been placed at the end. The problems discussed are legal philosophy, criminal law, criminal procedure, company law, civil procedure, and international law.

A book of this compass, intended not primarily for the professional lawyer, but for the general lay reader, cannot be a treatise, and necessarily must rest in outline to sketch so wide a field. Reference therefore is made by the author to his *Ziele des heutigen Strafrechts* (1909), *Einführung in die Rechtswissenschaft* (1902; 4th ed. 1912), and especially to his *Lehrbuch der Rechtsphilosophie* (1909) which is soon to appear in English translation (Boston Book Company) under direction of the Association of American Law Schools. Nevertheless, the present work, even though a popular contribution, is yet valuable in adding something here and there to an understanding of what is obscure in Kohler's general position.

There are in Germany today three distinct and vigorous schools of legal philosophy, and Kohler is the unquestioned head of one of these—the Neo-Hegelian School. The labors of Savigny in the early part of the last century developed the proposition of legal relativity. Later Jhering, whom Kohler is unable to mention without passionate animosity, attained the view of social purpose in the law, but his discovery overwhelmed him, and he was unable to mark out the limits or character of his new continent. Kohler has added a new element to the thoughts of his famous predecessors—the notion of culture which unites at once the passivity of the historical view with the active standpoint of the teleological doctrine. Culture, as Kohler has here revised his definition, "is the evolution of the forces inherent in humanity, leading to the highest possible development of human knowledge and human power of creation." There is no absolute law valid for all times and all places; but yet there is a distinction between the law that is, and the law that ought to be. The middle ground between these two positions, that of natural law on one side, and positivism on the other, is taken by the concept of culture which is the standard for the law of every age and every country.

There is a formal similarity between the legal philosophy of the Neo-Hegelians, and the legal philosophy of the second regnant German school, the Neo-Kantians, in this that both postulate a standard for legal rules. Kohler speaks of culture operating on a changing stream of historical facts; while Stammler thinks of a fixed law with a variable content. The resemblance in these two philosophical positions ceases with the verbal form of expression of their basic ideas. The essential difference appears to be one of ends and means. Kohler has in view always the end of social life—greater knowledge, and an expanding power over the external forces of nature. If the means of attaining these results do not for the age and the country interfere with the orderly evolution of human powers, Kohler would justify them; even though, from the standpoint of a later era, they would for that later age be universally condemned. Stammler stresses the means adopted by each age for its unfoldment of civilization, and theoretically he seems to be indifferent to what is accomplished so long as the procedure is strictly in accord with the rules governing each step of the way. For this reason Kohler can readily exhalt such institutions as wife capture, or slavery for primitive times, while Stammler would be obliged to say that they are contrary always and everywhere to the standards of justice.

Kohler's position is based on a foundation of universal history in which the lines of culture evolution are traced to their primitive foundations. In this field, Kohler has contributed the most generous results of any living man, and for this scholarship he has long been recognized in this country as a great authority by those writers who employ the evolutionary or comparative method in dealing with social sciences; but it has not been generally appreciated that these investigations of Kohler in universal legal history are the foundations not alone of a science of comparative law as a humanistic addition to knowledge, but that they are the groundwork of a philosophy of life, and especially a philosophy of its great central phenomenon, the law. To extend a comparison already ventured on, Kohler's legal philosophy has the great advantage, as against Stammler's, of combining both the positive and negative elements of cultural life; it seeks and promotes a definite end; it is not restricted by any formula of action. Stammler on the other hand has only a negative program; he has no concern from a legal viewpoint with ultimate ends; and he is content if legal rules fall within the rigid patterns which he has constructed. Where Kohler makes of the world-process a theatre of action for the Samurai of achievement, with an allowance for the "mad pranks" of human nature, Stammler appears to

establish a negative heaven of pillar-saints, inaction, and confucianism in the law.

In this work, Kohler raises no quarrel with Stammler and his school who have attempted a new departure from Kant's rationalism, but his contention is chiefly with the third leading school, the school of positivism, which has already been mentioned in passing. The detail of the presentation dealing, among other things, with the concepts, time, space, and causality, lies in the domain of metaphysics, rather than the law. Of the three schools, the Neo-Hegelian is the only one with a truly fortified and completely organized metaphysical foundation; and the positivist school especially appears to be able to thrive without any contact with ontological problems or questions of ultimate reality. Kohler in his attempt to relate legal problems with philosophical ideas, does not stop with generalities or abstractions after the fashion of teachers of natural law of the last century who when descending to actual problems were quite unable to proceed otherwise than with the instruments of conventional legal technic. Philosophy of law for Kohler is not a thickly walled fortress with muzzled cannon set apart from the movement of the outside world, but it enters organically and intimately into the detail of juridical life. This is disclosed particularly in his treatment of the problems of crime to which more than half of the pages of this book are devoted. Rightly or wrongly, he defends with great vigor the so-called "classical" theory of punishment based on an analysis of fredom of will, and he combats with equal force the views which since the time of Ferri have gained what may perhaps be said to be the leading position in criminal science. Kohler however adopts many ideas which are distinctive of the newer position; but for him these measures are not measures of punishment, and have no bearing on the true philosophy of punishment which rests essentially in atonement.

In view of our own economic problems, Kohler's brief discussion of the company problem is one of the most interesting parts of his readable book. In his larger work already cited (*Philosophy of Law*) he has in effect indicted the American solution of the trust problem. Legislation which operates only by prohibitions, he believes to be ineffective; on the contrary, legislation which operates with the aid of human nature will produce the most satisfactory results. Company organization is comparable to the organization of States. Kohler has already spoken in terms of the highest admiration of the discovery of our system of federal and state government (an invention, by the way, which he attributes to Peletiah Webster); and he thinks that this same form in company organ-

ization will furnish the means whereby neither the advantages of individual nor organized effort, both of which are culturally necessary, will be lost; and whereby each may retain its autonomy and elasticity within a definite sphere, and supplement and aid the other.

It needs hardly be stated that a German book which contains a table of contents does not require an index—at least not in Germany.

ALBERT KOCOUREK.

Le Président de la République, Son Rôle, Ses Droits, Ses Devoirs. By HENRY LEYRET. (Paris: Armand Colin, 1913. Pp. xvi, 282.)

The author of this little book is one of the best known political writers of France. His *La République et les Politiciens* (1909), *La Tyrannie des Politiciens*, (1910) and *Les Tyrans Ridicules* (1910) contain some of the most acute and suggestive criticisms of French political institutions and customs that we have. In his latest book, he has examined the presidential office in the light of forty years experience, and has attempted to give a picture of the actual rôle which the President plays in the political life of the Republic. As one reads his story one cannot avoid the conviction that the French presidency is, as the Radicals and Socialists have long claimed, pretty nearly a useless institution. M. Leyret shows from the testimony of both the Republicans and the Monarchists of the national assembly that the authors of the constitution intended to create, and believed they were creating, a great office, the incumbent of which would, if anything, be a more powerful magistrate than the President of the United States. But it has turned out quite otherwise. The reason for it lies in the fact that the authors of the constitution, after having conferred upon the President a large group of important powers, proceeded to reduce his rôle to a nullity by putting him under the guardianship of ministers and declaring him to be irresponsible. The consequence was that in their desire to prevent the President from doing what he ought not to do, they made it impossible for him to exercise the power which they gave him, and he no longer attempts to do so. No president since MacMahon has exercised the right of dissolution, the right of suspensive veto is a dead letter, and no executive messages except letters of resignation and letters of thanks for his election have ever been communicated to either chamber. A president who should attempt to exercise the powers which the constitution gives him would be denounced as a dictator and his resignation would probably be demanded by the chambers. Another cause of the enfeeblement of the presidency is no doubt to be found in